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MOFFAT-RIM 427 Laurier Avenue W. Suite 1200 Ottawa, ON K1R 7Y2 CANADA			EXAMINER BROPHY, MATTHEW J	
			ART UNIT 2191	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/765,511

Applicant(s)

WILLIS, EDWARD SNOW

Examiner

MATTHEW J. BROPHY

Art Unit

2191

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-85/86)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to amendment filed July 15, 2010.
2. Claims 1-10, 12 and 13 are now pending.
3. The Double Patenting Rejections have been withdrawn in view of the Terminal disclaimer filed by the applicant and approved on August 12, 2010.

Response to Amendment

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 3-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birum et al (2003/0221189), in view of Yu et al (USPN 6,597,908).

Claim 1:

A method of dynamically managing non-volatile memory items in a wireless device through a network, said method comprising the steps of:

-when connecting to said network **[[0051] "FIG. 1 shows a plurality of local area networks ("LANs") 120 and wide area network ("WAN") 130 interconnected by routers 110. Routers 110 are intermediary devices on a communications network that expedite message delivery. On a single network linking many computers through a mesh of possible connections")**

checking for a unique identifier item stored in said non-volatile memory items **[0022, "where resources that belong to a particular version of an application are identified and placed in a list (hereinafter this version is called "V1")"];**

-if said unique identifier exists, checking whether a value stored in said unique identifier item is the same as a software identifier (**Paragraph [0006], "current version of an application is created and compared to the list of resources in a new version"; Paragraph [0029] If a resource exists both in V1 and in V2, the process moves to decision block 515, where the process compares the resource in V2 with the resource in V1. This comparison may be done through a byte-by-byte comparison, through a digital signature, or some other comparison."**) located in software **([0009], "for the new version stored locally on the client" (Since software identifier stored in software, it is inherent that the new version must be stored locally.))** on said wireless device **[Figure 1, "140"; 0051, "wireless links" teaches that the device is wireless.]);**

-if said unique identifier item does not exist **([0039, "When a resource exists in V2 that does not exist in V1"])** or if said identifier is different from said software identifier **([0030, "If the resources are different"])**,
sending said software identifier along with an identifier **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server."**

(Configuration file that consists of identifiers) ...See Also [0039] "The process then moves to block 710, where the client may then purge each resource found in the upgrade list. When the client receives a request for a resource, it checks to see if the resource is contained in a cache or file that is locally accessible by the client computer. If the resource is not found locally, the client may request the resource from a content server using the list of resources in the most recent version. Thus, when upgrading from V1 to V2, when a resource exists in V2 that does not exist in V1, the resource will be requested when or before the client receives a request to access the resource." ... to said network [Figure 1, "140"];

-receiving from said network [Figure 1; 0051, "receives transmitted messages"] a set of changes related to said software [0011, "resources needed for the new version that are not in the current version"];

-executing said set of changes

[Figure 7, "715"] to update said non-volatile memory items [0043, "downloaded all or a subset of the resources required to change a version"]; and

-writing said software identifier to said unique identifier item

[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version."

(Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

-otherwise end.

(See FIG. 4, #410, No step if there is no unique identifier identified with a version change.)

Birum does not explicitly teach: ...an identifier indicating a particular carrier telecommunications company associated with the wireless device...

However, this limitation is taught by Yu. (Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows

for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

Claim 3:

-said writing step is performed after said updating step is complete

[0009, "client downloads the resources..., modifies a data structure..."; 0045, "while modifying the configuration file to be compatible with the new version."].

Claim 4:

-said updating step allows rollback to a previous software version

[0006, "the version of an application may be updated or rolled back"].

Claim 5:

-said updating step creates a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback to said existing non-volatile memory item.

[0045, "should not be overwritten...the upgrade list may specify that it should not be replaced."].

Claim 6:

-said updating step does not delete non-volatile memory items that have previously

been created [0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it should not be replaced."].

Claim 7:

-non-volatile memory items managed under other non-volatile memory management schemes are not updated in said updating step

[0038, "If the client has the most recent version, it may begin executing an application associated with the content." (If the versions are the same then there is no need to update.)].

Claim 8:

-software on said wireless device includes a mapping from old non-volatile memory items to new non-volatile memory items

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version."

(Modifying configuration file to make it compatible requires mapping of the two versions.)].

Claim 9:

-said mapping is modified using said set of changes

[0045, "process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (In order

to modify old configuration file you need to have a set of changes to make it compatible with new version.)).

Claim 10:

A method for dynamically managing non-volatile memory items on a wireless device during registration to a network, said method allowing rollback to previous versions of software using said non-volatile memory items, said method comprising the steps of:

-on registration **[0051, are "intermediary devices on a communications network.., remotely connected"]**, checking the non-volatile memory items for a unique identifier **[0022, "where resources that belong to a particular version of an application are identified and placed in a list (hereinafter this version is called "V1")"]**;

-if said unique identifier item exists, checking whether a value in said unique identifier item is the same as a software identifier; **[0006, "current version of an application is created and compared to the list of resources in a new version"; 0029, "where the process compares the resource in V2 with the resource in V1 ."]**

-if said unique identifier item does not exist **[0039, "when a resource exists in V2 that does not exist in V1..."]** or if said identifier is different from said software identifier **[0030, "If the resources are different..."]**, performing steps of:

-sending said software identifier along with an identifier **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers)]**...to said network **[Figure 1, "140"]**;

-receiving a set of changes from said network **[Figure 1; 0051, "receives transmitted messages"]** to update said non-volatile memory items, said updating step: **[0011, "resources needed for the new version that are not in the current version"]**

-creating a new non-volatile memory item rather than replacing an existing non-volatile memory item to facilitate rollback;
[0045, "should not be overwritten...the upgrade list may specify that it should not be replaced."]

-retaining non-volatile memory items that have previously been created;
[0041, "the client may or may not actually delete"; 0045, "upgrade list may specify that it should not be replaced."]

-avoiding non-volatile memory items created under traditional management;
[0045, "When so designated, if such resources do not exist on a client computer, they may be updated with a "default"..." ("Traditional provisioning mechanisms" are considered well-known methods because "traditional" indicates old and well known.))]

-writing said software identifier to said unique identifier item [0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)], whereby said creating, retaining, and avoiding steps in said updating step allows rollback to previous versions of software on said wireless device [0006, "the version of an application may be updated or rolled back"]

-otherwise ending.

See FIG. 4, #410, No step if there is no unique identifier identified with a version change.

Birum does not explicitly teach: ...an identifier indicating a particular carrier telecommunications company associated with the wireless device...

However, this limitation is taught by Yu. (Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC

must determine whether that preferred traffic carrier is presently available at step 24.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

Claim 12:

A wireless communication device comprising:

- a receiver for receiving signals from a network; **[0051, "receives transmitted messages"]**
- a transmitter for transmitting signals to a network; **[0051, "receives transmitted messages and forwards them to their correct destinations over available routes."]**
- a digital signal processor for processing signals to be sent on said transmitter and received on said receiver; **[Figure 3, "302"]**
- a microprocessor communicating with said digital signal processor; **[Figure 3, "306"]**

-non-volatile memory having program storage and non-volatile memory items

[0061, "Computer storage media may include volatile and nonvolatile, removable..."], said non-volatile memory communicating with said microprocessor **[0051, "many computers through a mesh of possible connections..."; 0061, "store the desired information and which can be accessed by a computing device."]**; and input and output subsystems interacting with said microprocessor,

wherein said microprocessor including: **[Figure 3, "320"]**

-means for checking said non-volatile memory items for a unique identifier item, **(See FIG. 4 & related text at [0022]. Resources are listed for a current version at 405 (software identifiers for resource items in V1). At step 430 (& FIG. 6) resource list, with unique identifier item, for V2 is identified.)**

-means for checking whether a value stored in said unique identifier item is the same as a software identifier

[0006, "current version of an application is created and compared to the list of resources in a new version"; 0029, "where the process compares the resource in V2 (unique identifier items) with the resource in V1 (software identifiers)."];

-means for updating said non-volatile memory; **[0045, "downloaded all or a subset of the resources required to change a version"]**

-wherein if said means for checking said non-volatile memory for a unique identifier item finds that said unique identifier item does not exist **[0039, "When a resource exists in V2 that does not exist in V1"]** or said means for checking whether said value finds said value is different from said software identifier **[0030, "If the resources are different"]**,

-said wireless device sends said software identifier to said network and receives a set of changes, **[0046, "a client can change a file, such as a configuration file, and cause that file to be sent back to a server." (Configuration file that consists of identifiers); 0051, "receives transmitted messages"]** from said network **[Figure 1]**

-said means for updating said non-volatile memory executing said set of changes **[0043, downloaded all or a subset of the resources required to change a version]**

-and writing said software identifier to said unique identifier item.
[0045, "the process may maintain data contained in the old configuration file while modifying the configuration file to be compatible with the new version." (Modifying old configuration file to be compatible with new version allows easy tracking both old and new version)]

Birum does not explicitly teach: ...an identifier indicating a particular carrier telecommunications company associated with the wireless device...

However, this limitation is taught by Yu. (Col. 5, Ln 39-64, "In step 20 a mobile station originates/receives a call using standard call setup procedures. In step 22, the BSC accesses the DFC database for the mobile station originating/receiving the call using the mobile station's identifier as an index into the database to find the record corresponding to the mobile station either receiving/originating the call, and selecting from that record the preferred traffic carrier. After having determined the preferred traffic carrier for the mobile station at step 22, the BSC must determine whether that preferred traffic carrier is presently available at step 24.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Birum with the teachings of Yu as Yu's disclosure teaches: " A further advantage of the present invention is that the DFC database allows for effortless software upgradeability and expansion of the testing system." (Col. 3, Ln 14-16.)

15. Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birum et al (2003/0221189), in view of Yu et al (USPN 6,597,908) and further in view of in view of Moore et al (2002/0078142).

Claim 2 and 13:

Birum teaches the limitations of claims 1 and 12, and Moore further teaches the

limitations of Claims 2 and 13: and in addition the identifiers are version numbers **[Figure 6A]**.. In addition, it would be obvious to one of ordinary skill in the art to apply the system versions numbers in Moore to the Birum invention as the two references are in the same field of endeavor, and the use of version numbers provides a tool of comparing operating system products. (Moore Paragraph [0008] "The information may be organized into records that identify things such as whether an online driver exists for the device, and if so, **what its version number is, so that other detected versions of that driver (e.g., on a local hard drive) can be compared** against the online version to determine which is the most-recent version and/or the "best match.") further, the well-known comparison of version numbers suggested in Moore would be obvious to try, with both a predictable result (a successful comparison mechanism) and a reasonable expectation of success.

Response to Arguments

Applicant's arguments filed July 15, 2010 have been fully considered but they are not persuasive.

In Remarks, Applicant Argues:

In the F/OA at page 13, the Examiner states that “sending said software identifier along with an identifier (emphasis added) is disclosed by **Birum** ‘[0046, “a client can change a file, such as a configuration file and cause that file to be sent back to a server.” (Configuration file that consists of identifiers)]...to said network [Figure 1, “140”]”. Applicant finds the latter part of the Examiner’s reasoning to be unclear as to whether the Examiner is equating the cited portion of Birum with the claimed software identifier or the claimed identifier. For clarity, the applicant assumes that the Examiner is equating **Birum’s** “configuration file that consists of identifiers” with the software identifier in the subject claim and not the identifier also found in the same claim; otherwise it would contradict the Examiner’s reasoning later in the F/OA where it is stated that “**Birum** does not explicitly teach...an identifier....”.

Proceeding on the premise that the Examiner is equating the “configuration file that consists of identifiers” with software identifier, this is contradictory and inconsistent with the meanings applied to the term software identifiers as interpreted by the Examiner with respect to occurrences earlier in the claim. For example at page 12 and 13 of the OA the Examiner equates software identifier with “the list of resources in a new version” taught in **Birum**.

Thus the sending of configuration file described at [para. 0046] of **Birum** is not, as alleged by the Examiner, equivalent to “sending a software identifier” if the Examiner’s reasoning earlier in the claim were to be followed. Furthermore, **Birum** contemplates sending an entire file rather than a software identifier as defined in the present claims. Furthermore, and as acknowledged by the Examiner, **Birum** does not teach the limitation of an “identifier indicating a particular carrier company associated with the wireless device”.

Accordingly, while the Applicant agrees **Birum** does not explicitly teach “... an identifier indicating a particular carrier company associated with the wireless mobile device...”, **Birum** also does not teach sending the software identifier.

The Examiner has introduced **Yu** as teaching the identifier indicating a particular carrier. As discussed in the Applicant’s previous response **Yu** describes a mobile station sending only mobile station identifiers to the network. At the BSC **Yu** uses the mobile identifier in a look-up table to find a carrier company. The Examiner argues that this look-up using the mobile identifier in the BSC is equivalent to the step of sending... an identifier indicating a particular carrier company by the device. Applicant contends that this is improper since this moves the claimed step, which is performed at the mobile device to be performed at the BSC. The present claims do not recite this step being performed at the BSC. Accordingly **Yu** does not teach the feature of sending an identifier indicating a particular carrier. Furthermore if this or other steps are performed at the BSC then one of the benefits of the subject application would not be realized i.e. changes to the non volatile(NV) file system made outside the context of Dynamic NV management do not unexpectedly reset in subsequent time periods.

Examiner's Response:

The examiner respectfully disagrees. Applicant's argument concerning the teaching of Birum on page 13 of the previous action as relating to "software identifier" and "identifier" of the claims, the Birum reference teaches a configuration file incorporating multiple identifiers (¶¶39-46) and therefore anticipates both the software identifier and another identifier. As discussed previously, Birum does not teach "an identifier *indicating a particular carrier company*" but this element is taught by Yu as described above.

4. Further, the application of ¶¶6 & 46 to the "software identifier" is not inconsistent as the applicant contends in the remarks. Birum teaches a system of comparing software resources to though versions on a client for the purposes of updating or rolling back software (¶6). When an required element of a new software version is not found locally, the request is sent to content server for the missing resource, the request including a software identifier (¶39). Also, one particular type of resource that can be gained from the content server, in one embodiment of Birum, is a configuration file with configuration information on the software (¶46). Birum teaches, therefore, sending the software identifier (¶¶39-46) to the network (140). This in some embodiments involves identifying multiple resources, and therefore anticipates "software identifier" and "identifier" of the claims. Again, Birum does not teach "an identifier *indicating a particular carrier company*" but this element is taught by Yu as described above.

Applicant's argument regarding sending an entire file rather than a software identifier is In response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant relies (i.e., sending *only* an identifier without a file or list as in Birum) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Finally, applicant's arguments regarding Yu are not persuasive. the features upon which applicant relies (i.e., performing claims steps only at the mobile device) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, the identifier sent by Yu anticipates an identifier indicating a particular carrier company. Yu teaches sending of a mobile ID number from a mobile station to the base station (Col. 3 In 63 to Col 4, Ln 42). This ID number is used as a table index to identify the carrier (e.g. Col 2, Ln 12-24). Therefore the examiner interprets this mobile identification number as "an identifier indicating a particular carrier..."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. BROPHY whose telephone number is 571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB
10/20/2010

/Anna Deng/
Primary Examiner, Art Unit 2191